IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17923 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAKIL AHMED BASIR AHMED SHAIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 17923 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MS MITA S PANCHAL AGP for Respondent No. 1

RULE SERVED for Respondent No. 1,2

GOVERNMENT PLEADER for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 05/05/2004

ORAL JUDGEMENT

The petitioner above named has preferred this petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 04/12/03 passed by respondent no.2 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that two offences were registered against him before Prohibition Police Station Western Division at C.R.No.1791/2003 & 1350/2003 on 11/11/03 & 29/11/03 respectively for offences punishable u/s.66, 65, 81 and 116 of the Bombay Prohibition Act, 1949. It was also alleged against the petitioner that two witnesses had given statements against him saying that he was engaged in bootlegging activities.

3. On the strength of the aforesaid registered offences and two statements of unnamed witnesses, the detaining authority found that the petitioner is required to be detained, with a view to prevent him from indulging in bootlegging activities which amounted to a threat to public order. Accordingly, the impugned order of detention was passed against the petitioner.

4. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. It has been contended here that on a mere fact that few offences were registered, it could not be said that there was a threat to public order. It has also been contended that the names of the witnesses were not disclosed to the petitioner, and therefore, the valuable right of the petitioner to make an effective representation against his detention has been denied. That, therefore, the order of detention is illegal and hence, it may be quashed and set aside.

5. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita S Panchal learned AGP has appeared on behalf of the respondents. The learned AGP submits affidavit of the detaining authority. It is taken on record. I have heard the learned advocates for the parties and have perused the papers.

6. The learned advocate for the petitioner has contended that on mere registration of a couple of offences, it cannot be said that the petitioner's activities were likely to cause a threat to public order.

In this connection, the learned advocate for the petitioner has relied upon a decision in the case of Piyush Kantilal Mehta V/s. Commissioner of Police, Ahmedabad City reported in A.I.R. 1989 SC 491. Para 17 & 18 of the said decision are relevant which are reproduced for ready reference as follows;

Para 17 : "Does the expression 'public order' take in every kind of infraction of order or only some categories thereof? It is manifest that every act of assault or injury to specific persons does not lead to public disorder. When two people quarrel and fight and assault each other inside a house or in a street, it may be said that there is disorder but not public disorder. Such cases are dealt with under the powers vested in the executive authorities under the provisions of ordinary criminal law but the culprits cannot be detained on the ground that they were disturbing public order. The contravention of any law always affects order but before it can be said to affect public order, it must affect the community or the public at large. In this connection we must draw a line of demarcation between serious and aggravated forms of disorder which directly affect the community or injure the public interest and the relatively minor breaches of peace of a purely local significance which primarily injure specific individual and only in a secondary sense public interest. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Preventive Detention Act but a disturbance which will affect public order comes within the scope of the Act."

Para 18 : In the instant case, the detaining authority, in our opinion, has failed to substantiate that the alleged antisocial activities of the petitioner adversely affect or are likely to affect adversely the maintenance of public order. It is true some incidents of beating by the petitioner had taken place, as alleged by the witnesses. But, such incidents, in our view, do not have any bearing on the maintenance of public order. The petitioner may be punished for the alleged offences committed by him but, surely, the acts constituting the offences cannot be said to have affected the even tempo of the life of the community. It may be that the petitioner is a bootlegger within the

> meaning of S.2(b) of the Act, but merely because he is a bootlegger he cannot be preventively detained under the provisions of the Act unless, as laid down in subsection (4) of S.3 of the Act, his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance of public order. We have carefully considered the offences alleged against the petitioner in the order of detention and also the allegations made by the witnesses and, in our opinion, these offences or the allegations cannot be said to have created any feeling of insecurity or panic or terror among the members of the public of the area in question given rise to the question of maintenance of public order. The order of detention cannot, therefore, be upheld."

7. On going through the above observations, it is amply clear that the principle enunciated in the aforesaid decision will squarely apply to the facts of the case on hand. Therefore, I respectfully follow the principle enunciated in the aforesaid decision.

8. So far the statements of the witnesses are concerned, if we have a bare look at those statements, it can be gathered that even if the said facts stated in the said statements are correct, then also it would be difficult to accept that the petitioner's activities had created a threat to public order. Therefore, on the one hand, the registration of a few prohibition offences against the petitioner would not be sufficient for holding that the petitioner's activities were likely to cause a threat to public order, and, on the other hand, looking to the nature of the statements made by the witnesses, it cannot be said that the petitioner's activities were likely to cause a threat to public order. In that view of the matter, when the order of detention has been based on the aforesaid registered and unregistered cases and when it has been found that the order of detention could not be passed on the basis of the aforesaid registered and unregistered cases, then there is no alternative but to hold that the order of detention is not legal and valied. In that view of the matter, the said order is required to be quashed and set aside.

9. For the foregoing reasons, this petition is allowed. The impugned order of detention dated 04/12/03 passed by respondent no.2 against the petitioner, is ordered to be quashed and set aside. Detenu, Shakil Ahmed Basir Ahmed Shaikh, is ordered to be set at liberty

forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

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